

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

VICTOR LEMAR EDWARDS,  
ADC #500959

PLAINTIFF

v.

3:15CV00040-DPM-JTK

LUTHER WHITFIELD, et al.

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge D. P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District

Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

### **DISPOSITION**

Plaintiff Edwards is a state inmate confined at the Cummins Unit of the Arkansas Department of Correction (ADC). He filed this pro se 42 U.S.C. § 1983 action against Defendants, alleging unlawful conditions of confinement while incarcerated at the Mississippi County Detention Center.

Pending before the Court is the Defendants’ Motion to Dismiss, filed on March 17, 2015 (Doc. No. 14). Plaintiff has not responded to this Motion, despite the Court’s April 7, 2015 Order directing him to respond within thirty days, and warning him that failure to respond could result in the dismissal without prejudice for failure to prosecute. (Doc. No. 19) Therefore, pursuant to Local Rule 5.5(c)(2), Plaintiff’s complaint should be dismissed without prejudice, for failure to prosecute.<sup>1</sup> Accordingly,

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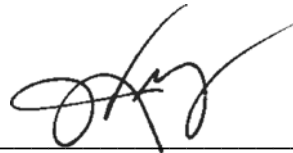
<sup>1</sup>Rule LR5.5(c)(2) of the Rules of the United States District Courts for the Eastern and Western Districts of Arkansas provides as follows:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case and to prosecute or defend the action diligently . . . . If any communication from the Court to a pro se plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. . . .

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's complaint be DISMISSED without prejudice for failure to prosecute.
2. Defendants' Motion to Dismiss be DENIED without prejudice.

IT IS SO RECOMMENDED this 14<sup>th</sup> day of May, 2015.

A handwritten signature in black ink, appearing to read 'J. Kearney', is written above a horizontal line.

JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE